

**IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA
WHEELING DIVISION**

JAMES CASSITY)	
Plaintiff,)	Case No 5:11-cv-00102
v.)	JURY DEMAND ENDORSED HEREON
SCOTT LOWERY LAW OFFICE, P.C.,)	VERIFIED CIVIL COMPLAINT
Defendant.)	(Unlawful Debt Collection Practices)
)	

PLAINTIFF'S COMPLAINT AND DEMAND FOR JURY TRIAL

JAMES CASSITY (Plaintiff), by his attorneys, alleges the following against SCOTT LOWERY LAW OFFICE, P.C., (Defendant):

INTRODUCTION

1. Count I of Plaintiffs' Complaint is based on the Fair Debt Collection Practices Act, *15 U.S.C. 1692 et seq.* (FDCPA).
2. Count II of Plaintiff's Complaint is based upon the West Virginia Consumer Credit and Protection Act, *W. Va. Code §46A-1-101 et seq.* (WVCCPA)

JURISDICTION AND VENUE

3. Jurisdiction of this court arises pursuant to *15 U.S.C. 1692k(d)*, which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and *28 U.S.C. 1337* grants this court supplemental jurisdiction over the state claims contained therein."
4. Because Defendant conducts business in the state of West Virginia, personal jurisdiction is established.
5. Venue is proper pursuant to *28 U.S.C. 1331(b)(2)*.

VERIFIED COMPLAINT

PARTIES

6. Plaintiff is a natural person who resides in Wheeling, West Virginia.
7. Defendant is a national company with its headquarters in Denver, Colorado.
8. Defendant uses instrumentalities of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another and is a "debt collector" as that term is defined by *15 U.S.C. § 1692a(6)* and *W. Va. Code §464-2-122(d)*.
9. Defendant is a collection agency that in the ordinary course of business, regularly, on behalf of itself or others, engages in debt collection.

FACTUAL ALLEGATIONS

10. Defendant is attempting to collect upon an alleged debt of approximately \$4,000.00 owed to Best Buy.
11. In an effort to collect upon the alleged debt, Defendant has been placing on average one (1) to two (2) collection telephone calls a week to Plaintiff for approximately two (2) months.
12. During conversations with Plaintiff regarding the alleged debt, Defendant's agents have repeatedly threatened to "take" Plaintiff's home should immediate payment not be made.
13. As a result of Defendant's threats, Plaintiff made a payment of one hundred dollars (\$100.00) but Defendant informed Plaintiff that this would only "extend" the account deadline.
14. Since that time, Defendant's agents have repeatedly informed Plaintiff that unless a single payment in full is received, Defendant will seize Plaintiff's home or other property.

COUNT I
DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

15. Defendant violated the FDCPA based on the following:

- a. Defendant violated §1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse Plaintiff in connection with the collection of a debt; and
- b. Defendant violated §1692e(4) of the FDCPA by threatening Plaintiff with property seizure when Defendant has not intent on every carrying out such action.
- c. Defendant violated §1692e(5) of the FDCPA by threatening Plaintiff with legal action when Defendant has not intent on every carrying out such action.

WHEREFORE, Plaintiff, JAMES CASSITY, respectfully requests judgment be entered against Defendant, SCOTT LOWERY LAW OFFICE, P.C., for the following:

16. Statutory damages of \$1000.00 pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*,
17. Costs and reasonable attorneys' fees pursuant to the Fair Debt Collection Practices Act, *15 U.S.C. 1692k*
18. Any other relief that this Honorable Court deems appropriate.

From: Cornette Law

Fax: (888) 822-2980

To: +13042332185

Fax: +13042332185

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COUNT II
**DEFENDANT VIOLATED THE WEST VIRGINIA CONSUMER CREDIT AND
PROTECTION ACT**

19. Defendant violated the WVCCPA based on the following:

- a. Defendant violated §46A-2-124(d) of the WVCCPA by threatening Plaintiff with property seizure when Defendant has no intent on every carrying out such action and further failed to inform Plaintiff that obtaining a judgment was a pre-requisite prior to seizing any property.

WHEREFORE, Plaintiff, JAMES CASSITY, respectfully requests judgment be entered against Defendant, SCOTT LOWERY LAW OFFICE, P.C., for the following:

20. Statutory damages, as adjusted by inflation, of \$4,388.03 per violation,
21. Costs and reasonable attorneys' fees pursuant to *W. Va. Code §46A-5-104*,
22. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,
By: /s/ Franklin D. Cornette
Franklin D. Cornette, Esq.
Cornette Law, PLLC
PO BOX 967
Weston, WV 26452
Telephone (888) 822-2980
Facsimile (888) 602-6910
franklin@cornettelaw.com

Of Counsel:
Krohn & Moss, Ltd.
10474 Santa Monica Blvd. Ste. 401
Los Angeles, CA 90025

DEMAND FOR JURY TRIAL

VERIFIED COMPLAINT

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PLEASE TAKE NOTICE that Plaintiff, JAMES CASSITY, hereby demands trial by jury in this action.

VERIFICATION OF COMPLAINT AND CERTIFICATION**STATE OF WEST VIRGINIA**

Plaintiff, JAMES CASSITY, states the following:

1. I am a Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this Complaint in good faith and solely for the purposes set forth in it.
6. Each and every exhibit I have provided to my attorneys which has been attached to this Complaint is a true and correct copy of the original.
7. Except for clearly indicated redactions made by my attorneys where appropriate, I have not altered, changed, modified or fabricated these exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

Pursuant to 28 U.S.C. § 1746(2), I, JAMES CASSITY, hereby declare (or certify, verify or state) under penalty of perjury that the foregoing is true and correct.

4/15/11

Date



JAMES CASSITY